



The Comptroller General
of the United States

Washington, D.C. 20548

Glass

Decision

Matter of: Advanced Systems Technology, Inc.

File: B-235327

Date: August 29, 1989

DIGEST

Protest that awardee is not qualified technically to perform the work under solicitation is without merit where review of the agency technical evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a technically outstanding proposal that provided the best value to the government.

DECISION

Advanced Systems Technology, Inc. (AST), protests the proposed award of a cost plus-award-fee contract by the U.S. Army Communications-Electronics Command to Airspace Technology Corporation (Air Tech) under request for proposals (RFP) No. DAAB07-88-R-B019, a 100 percent small business set-aside for software engineering services in support of the fire support system at Fort Sill, Oklahoma. We deny the protest in part and dismiss it in part.

The RFP, issued on November 27, 1987, contemplated the award of a cost reimbursement, level of effort contract to provide support for mission critical defense systems software as well as for other software systems when they are specified in tasking documents. The contract was for a 12-month base period with four 1-year options each containing options for additional levels of effort. Award under the RFP was to be made to the offeror with the best overall proposal with appropriate consideration given to the stated evaluation factors. The RFP listed in descending order of importance the evaluation criteria of technical, management and cost. Offerors were informed that technical was twice as important as management and cost combined and management was more important than cost.

The RFP technical factor included evaluation of technical approach, understanding of government problems and personnel experience. Management factors consisted of organizational

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experience, management techniques and the hiring and staffing plan.

This fire support system services requirement previously was awarded under a small business set-aside in 1983 to Telos Computing, Inc. The contract was to expire December 1, 1988. In planning the follow-on procurement, the agency elected to set aside portions of the work, approximately 25 percent, for small businesses. The remainder of the requirement was solicited on an unrestricted basis. Award was made to Telos, now a large business, under the unrestricted solicitation. The proposed award for the set-aside portion is the subject of AST's protest.

Six proposals were submitted at the closing date of February 9, 1988, including proposals from Air Tech and AST. As a result of the initial evaluation, a competitive range was established including five of the six offerors. Discussions were conducted with the competitive range offerors, best and final offers (BAFOs) were submitted, and a final technical evaluation was conducted. Air Tech's technical proposal was found outstanding and its management plan acceptable. AST's proposal was rated acceptable in the technical and management areas. The evaluators found the risk in accepting Air Tech's offer to be low, while AST's offer posed moderate risk. A cost benefit analysis of the BAFOs was also performed. Based on Air Tech's outstanding technical rating, its proposal's low risk, and a finding that its cost was fair and reasonable, the source selection official determined Air Tech's offer to be the best value to the government. On April 7, 1989, all offerors were informed that Air Tech was the apparent successful offeror. AST and another offeror then challenged Air Tech's size status before the Small Business Administration (SBA) because Air Tech proposed to use Telos as a subcontractor. The SBA ruled that Air Tech is a small business for purposes of this procurement. AST has appealed this determination. On April 27, AST protested the proposed award to Air Tech.

AST contends that Air Tech will not perform at least 50 percent of the work as required by the solicitation and that Air Tech is competing only as a small business "front" for Telos. AST also argues that Air Tech is not technically qualified to perform this contract. AST further objects to the protracted length of time to award the contract because the RFP was issued November 27, 1987, and award not announced until April 7, 1989, argues that the agency improperly failed to consider AST's allegations that Telos employees improperly billed the government for time spent writing Air Tech's proposal, and contends that it was prejudiced by the Army's use of a Telos employee to deliver

AST's request for BAFOs, which contained one technical and four cost questions, to a courier for delivery to AST. Finally, AST asserts that Air Tech had an improper competitive advantage because of work Air Tech performed as a subcontractor to Telos on the prior contract.

AST's first contention is that Air Tech will not perform at least 50 percent of the work as required by the solicitation limitation on subcontracting of services for small business concerns, Federal Acquisition Regulation § 52.219-14(a). The record, however, indicates that Air Tech plans to subcontract approximately 37 percent of the contract. Although Telos is proposed as the major subcontractor, Air Tech proposes to do in excess of 51 percent of the work with its own employees. Thus, the record does not support AST's contention that Air Tech will not perform at least 50 percent of the work.

Next, AST asserts that Air Tech is not technically qualified to perform this contract because it does not have the technical experience required. In this regard, AST contends that Air Tech has no local office or staff at or near Fort Sill and that neither Air Tech nor its personnel have any direct experience in software engineering services in support of fire support systems. It asserts that Air Tech's experience is limited to the manufacture of electronic air traffic control systems.

The record indicates that Air Tech is a privately held, four year old small business that specializes in systems engineering and systems integration with specific expertise in radar, data processing and display, software, communication, interoperability and product support. Air Tech's main areas of experience are air traffic control, air defense systems, and battle management systems as they relate to tactical air control, fire support, and tactical data systems. Although Air Tech is a relatively new business, the record indicates that Air Tech has been awarded several contracts more than over 20 million dollars. For example, Air Tech currently is performing the Airspace Management System contract for the Naval Airspace Surveillance and Traffic Control System and is responsible for all program management, system engineering, logistics, system integration, installation and follow-on maintenance support. Air Tech is also currently performing an Air Force contract for the complete design and documentation of the Tower/Restoral Vehicle/Surveillance Restoral Vehicle which are individual shelterized tactical mobile air traffic control facilities.

Air Tech in its proposal provided names and resumes for each proposed staff member. Air Tech also provided a listing and

resumes of technical personnel who would either be available upon contract award or indicated that they would accept a contingent job offer from Air Tech. The identified staff and key personnel met the requirements for education, experience and security classification. The personnel identified were knowledgeable in fire support systems, especially those systems identified in the RFP and they had experience in the computer hardware and software delineated in the RFP's statement of work. Air Tech's proposal also reflected considerable experience with mission critical defense systems, of which the fire support systems is one, and extensive experience in software design, development and testing. From this the Army determined that Air Tech had demonstrated a high degree of applicable expertise and experience; the Army viewed Air Tech's proposal as presenting a sound, flexible technical approach that demonstrated an excellent understanding of the government's technical problem and showed an understanding of the basic challenges of supporting the systems in general. On the record before us, we find nothing unreasonable with the Army's evaluation.

AST also objects to the "excessive" length (approximately 15 months from RFP issuance until proposed award) of this procurement. The Army reports that since this procurement represented only a small portion of the total Fort Sill requirement, substantial time and resources were spent on the unrestricted portion of the requirement. The Army also states that there were delays because the evaluation took time and the evaluation team was at Fort Sill in Oklahoma and management was located at Fort Monmouth, New Jersey. We think the delay was reasonable under the circumstances. In any event, a delay in meeting procurement milestones is a procedural deficiency which does not provide a basis for protest because it has no effect on the validity of the procurement. American Identification Products, Inc., B-227599, July 13, 1987, 87-2 CPD ¶ 42.

AST further contends that it was prejudiced by the Army's use of a Telos employee to send the request for BAFOs to AST, because the BAFO request contained technical and cost questions.^{1/} The Army reports that, to expedite the

^{1/} "Technical Question:

Reference Sub-subfactor 1b (Technical)

How does AST plan to test system that it has not previously supported and/or cannot be simulated by AST/Litton's automated test tools and systems?

(continued...)

procurement, the BAFO letters were sealed in envelopes with each contractors' address on the outside of the envelopes and given to a Telos employee, who was a member of the support staff at Fort Monmouth, New Jersey, to be sent to the offerors by private courier. According to the agency the Telos employee was not advised of the envelope's contents.

AST received its BAFO request by private courier on November 18, 1988, and it was clear from AST's copy of the courier's receipt that the document was sent to AST by Telos from Fort Monmouth. Initially, we note that the issue is untimely since AST responded to the BAFO request in a timely fashion without objection, continued to participate in the procurement and did not protest until April 29, 1989 when it found that it would not receive award. Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988); Boonton Electronics Corp., B-233436, Jan. 27, 1989, 89-1 CPD ¶ 93. Although the protester argues that it learned for the first time after receipt of the agency report that the Army allegedly "intentionally" used Telos to transmit the BAFO request, we do not believe this makes AST's protest timely. Since the prejudice to AST would have occurred whether the Army's actions were

1/(...continued)

"Cost/Misc. Comments:

(1) The level of effort (hours) proposed by labor categories must be as stated in the solicitation. Your proposed hours appear to be greater than that stated in the solicitation.

(2) Labor rate escalation should not exceed 3% for 1988 and 3.5% for 1989 and beyond.

(3) Since it was difficult to figure out your fee calculation, clarification is requested. Recommend a base fee of 0% to 3% and an award fee of 0% to 7%.

(4) In accordance with subsection M.5, your proposal will be evaluated for cost realism."

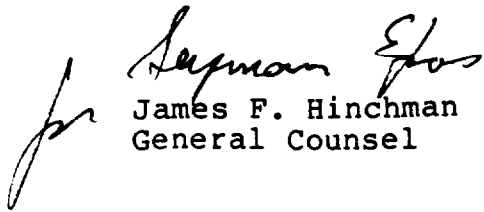
intentional or unintentional, it therefore does not affect the timeliness of this protest issue.

In any event, we do not believe that the integrity of the procurement system has been compromised by the Army's actions. AST does not submit any evidence that the envelope it received was opened or tampered with. Nor does AST show how it was prejudiced by the agency's action. Further, the five questions (in the BAFO request) do not reveal the contents of AST's offer and knowledge of the questions do not appear to offer any competitive advantage. The one technical question requested additional information as to how AST plans to test new systems, but conveys nothing as to AST's initial proposal; the other four questions/comments concerning cost clarify agency cost parameters or confirm RFP requirements, for example, the agency requested that AST's level of effort should be as required by the solicitation and states that proposal would be evaluated for cost realism.

AST alleges that the Army in evaluating Air Tech's proposal failed to take into consideration allegations that Telos employees improperly charged the government for time spent in writing Air Tech's proposal in this procurement. The Army reports that its Criminal Investigation Division investigated these allegations and found them to be unsubstantiated.

Finally, AST essentially complains that Air Tech had an advantage in this procurement because of work performed on a previous subcontract with Telos. We have recognize that some firms may enjoy a competitive advantage because of particular business circumstances. Marine Hydraulics Int'l, Inc., B-219683, Nov. 26, 1985, 85-2 CPD ¶ 602. Such advantages only become objectionable, however, when they result from a preference or other unfair action by the government. Holmes & Narver Servs., Inc., B-208652, June 6, 1983, 83-1 CPD ¶ 605. In this case, AST has not shown that any action on the part of the government resulted in Air Tech having an unfair competitive advantage. In this connection, the record shows that the work performed by Air Tech under the subcontract cost \$16,280, was for a limited purpose, was of a short duration 2 months, and was conducted by a consultant who is not proposed to perform services under this contract.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel